

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

SECOM-D-339

8 September 1980

MEMORANDUM FOR: Collection Requirement and Evaluation Staff, NFAC

STATINTL ATTENTION:

[REDACTED]

STATINTL FROM:

[REDACTED]

Executive Secretary

SUBJECT: National Release and Disclosure Policy

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1. I have just read [REDACTED] report dated 25 July, STATINTL
and [REDACTED] memorandum to the DCI.

2. You are to be commended for your representation of the DCI's interest in the course of the deliberations. While I acknowledge the premise that DoD elements are seeking further codification of release policy as associated with intelligence and that their idea of expanding a central record of released material has surface merit, I was concerned lest the time be wrong for such efforts. My concern is based on the perception that not enough time or intervening events have transpired to effectively demonstrate to the participating departments and agencies that the U.S. interest can, in truth, best be served through a true Intelligence Community with common goals under enlightened leadership.

3. In reading the report of your working group's effort, I feel that my concerns may have been justified; e.g., State's objections to participation and DoD's rejection of part of your recommendation.

4. I tried to grasp the infrastructure of philosophy that leads to these varying perceptions and drafted the attached memorandum to you. While not a very coherent presentation, its volume alone may be somewhat encouraging if only to let you know that someone else is struggling toward a viable solution. Let me summarize and carry the ideas a bit further here.

a. A claim that there is a National level release and disclosure policy is an error. This is a variation of the old National Military Disclosure Policy. The idea of looking at establishing a National policy which covers all classified information is an ambitious undertaking and I believe you were wise in accepting the more narrow objective of addressing classified military information and intelligence.

b. State Department's objection to the original scope of the undertaking may have triggered the working group's reassessment of what should be examined but the acceptance of State's objection should have carried with it a qualification that State's contributions to the intelligence collection efforts of the U.S. cannot be excluded from consideration.

c. There are nine different variations of the use of the term "intelligence" in the report without clearly and uniformly accepted definitions. In some cases a reader could not help but be confused. This speaks to a need to clearly and cleanly establish parameters that scope the problem.

d. As a corollary thought, the definition of classified military information as that "information under the jurisdiction of, or of primary interest to, the Department of Defense or its departments and agencies" raises considerable apprehension let it be interpreted as "possession is 9/10 of the law" and "once I've got your stuff I can do as I want with it." I see supporting evidence for my concern about such a possible interpretation in [redacted] statement in his memorandum to the DCI and specifically in his use of the term "collateral" when he says, "There is need for disseminating on an agency's own volition, collateral intelligence which relates to matters of mutual concern to foreign counterparts." Is he talking about intelligence collateral to military tactical intelligence, or is he speaking about collateral as opposed to SCI? In either case, I am concerned he is setting up a position for attack on the DCI's National Foreign Intelligence responsibilities. Again this speaks to a need for commonly accepted definitions.

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e. [] recommendation for a DCI review of disclosure policies concerning intelligence not now covered by the NDP must be modified lest approval be given to the acceptance of the status quo - which I think covers too much National Foreign Intelligence under the guise of it being military intelligence.

5. So, what to do?

a. First I think we should accept the spirit of the request for a DCI review of disclosure policy. We should:

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(1) Answer [] affirmatively with a qualified scope statement including definitions.

(2) Form an in-house task force to get the best position paper possible. Be prepared to argue among ourselves.

(3) Recognize and evaluate the adequacy and short falls of extant DCIDs on release and other aspects of policy that bear on release authorities.

(4) Come up with a straw man, but pretty solid, paper that includes a recommendation for a central registry thru networking in the out years as automatic data processing and funding for it become available.

(5) Float the draft through the DCI's Committees, i.e., COMIREX, SECOM, SIGINT, IHC, HUMINT, and bring it to NFIB.

b. Secondly, we should define the DCI's area of interest in language of E.O. 12036. National Foreign Intelligence should be considered intelligence resulting from tasking by the National Intelligence Tasking Center (E.O. 12036, 1-5) and/or funded under the National Foreign Intelligence Program Budget (E.O. 12036, 1-602).

NOTE: I believe it absolutely essential that we define what falls under the mantle of the DCI. The intelligence resulting from NITC tasking and paid for out of the NFIP budget is without question the core and minimum scope around which parameters of DCI primacy must be established. Acceptance of this

scope by all members of the Intelligence Community and by all recipients of National Foreign Intelligence will go far toward solving the overall need for guidance.

c. Third, and this is more in the line of easing acceptance of the above definition by DoD, we can use the wording of Section 4-210(3) of E.O. 12036 to exclude what does not fall within the purview of the DCI - i.e., "Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program."

d. Fourth, recognition should be given to the fact that there is an undefined (and probably undefinable) gray area which is referred to as the National - Tactical Interface. But we should rely heavily on the point of view that there are current, viable and flexible policies and procedures in the National Foreign Intelligence domain to satisfy any needs for release resulting in military or political advantages to the U.S. We should be duly concerned over pressure to formalize sterile procedures that risk loss of opportunity by senior policy makers to express or signal national interests by withholding or releasing intelligence to foreign governments.

e. And lastly in this enumeration, we must return to the concept of the "negative presumption." The participating departments and agencies must be given to clearly understand that National Foreign Intelligence without a NOFORN marking is not to be released without approval of the originator. The NOFORN marking on such material may mean other things but above all it means that the originator has made a conscious examination and decision that the material in its current form is not to be released to foreign nationals.

6. I hope these thoughts may be of interest and value in considerations of what way we should now proceed. I offer whatever assistance we may be to you.



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